

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING TEXT AMENDMENT REPORT FZTA-10-03
NORTH FORK GRAVEL
JULY 27, 2010

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by the Flathead County Planning and Zoning Office for an amendment to the text of the Flathead County Zoning Regulations. The proposed amendment would add a new definition to the North Fork Zoning District limiting the size and scope of extractive industries within the North Fork.

The Flathead County Planning Board will conduct a public hearing on the proposed text amendment on August 11, 2010 in the 2nd Floor Conference Room, 1035 1st Ave West, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed amendment at a date and time yet to be determined. Documents pertaining to the text amendment are available for public inspection in the Flathead County Planning and Zoning Office, Earl Bennett Building, 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the text amendment(s) will also be available for public inspection in the Flathead County Clerk and Records Office, 800 South Main Street, in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed amendment impacts the advisory area of the North Fork Land Use Advisory Committee (Committee). On July 31, 2010 the Committee will hold a public meeting to review the proposed amendment and make a recommendation to the Flathead County Planning Board. This space is reserved for a summary of the Committee's discussion and recommendation.

B. Planning Board

The Flathead County Planning Board will hold a public hearing on the proposed amendment on August 11, 2010 and make a recommendation to the Flathead County Commissioners. This space is reserved for a summary of the Flathead County Planning Board's discussion and recommendation.

C. Commission

The Flathead County Commissioners will hold a public hearing on the proposed amendment on a date to be determined. This space is reserved for a summary of the Commission's discussion and decision.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Flathead County Planning and Zoning
1035 1st Ave W

Kalispell, MT 59901

ii. Technical Assistance

N/A

B. Section(s) Proposed for Amendment

The proposal would add a new definition to Section 3.40.050 (FCZR). The new definition would create a new (1) in Section 3.40.050 (FCZR) and the existing definitions would be re-numbered 2 through 6.

C. General Character of and Reason for Amendment

On February 18, 2010 Governor Brian Schweitzer of the State of Montana and Premier Gordon Campbell of the Province of British Columbia signed a Memorandum of Understanding and Cooperation (MOU) to restrict mineral development within the North Fork of the Flathead River watershed. A key element of this MOU was limiting the size of mineral extraction and the amount of materials that could be removed.

In the winter of 2010, this office contacted the chair of the Committee to suggest a workshop with the Committee to draft language for the text amendment. The Committee met on June 11, 2010 at Sonderson Hall in a public meeting to work shop the proposed language. The language in this text amendment is the language drafted in that meeting.

D. Proposed Amendment(s):

The proposed amendment will add a new definition to the definition section of the North Fork Zoning District (see figure 1 for the boundaries of the district). The definitions are listed in alphabetic order. The proposed definition would be numbered one (1) and the existing definitions would be re-numbered 2 through 6.

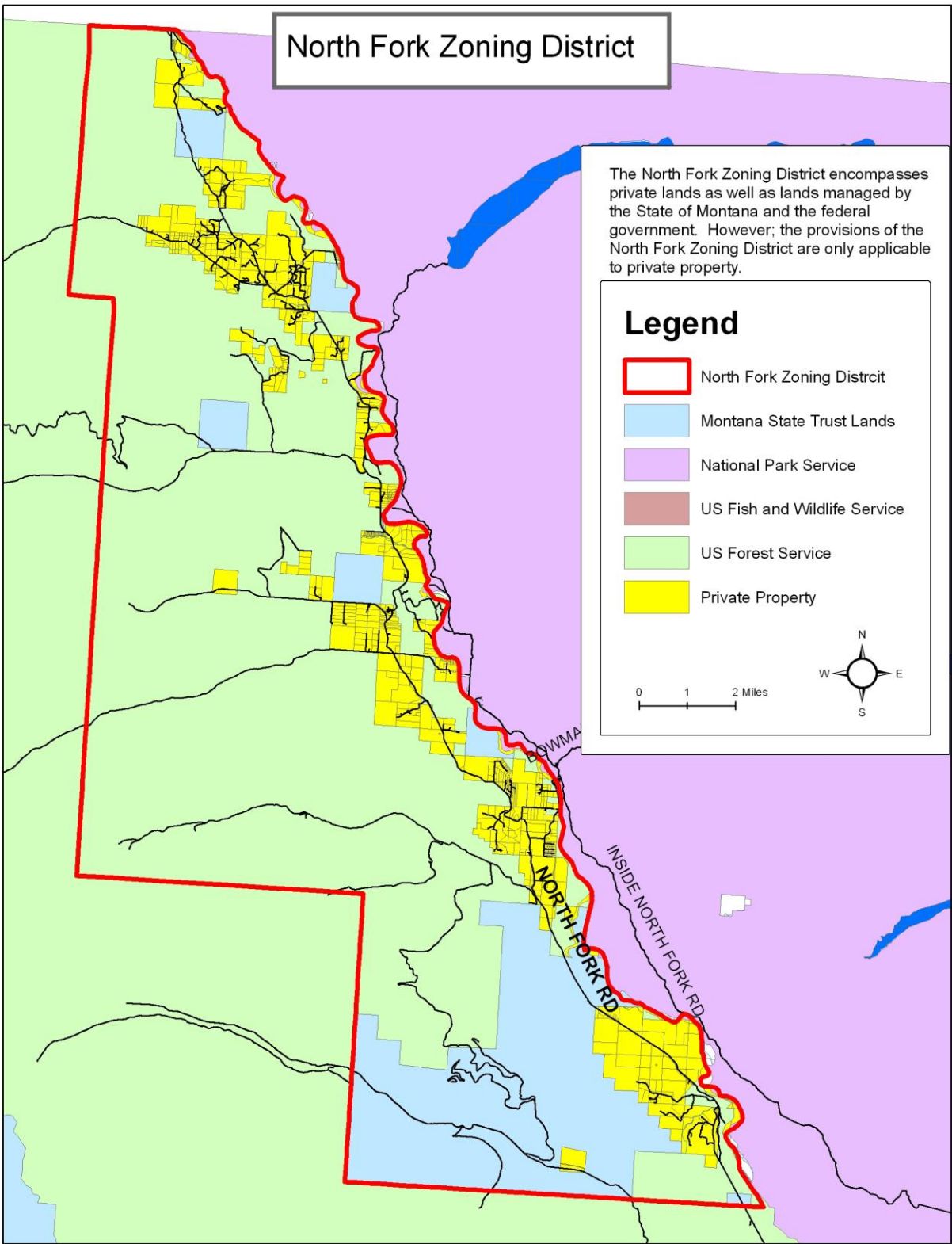
3.40.050 Definitions:

The definitions of terms used in these regulations are to be those used in the Flathead County Zoning Regulations except for terms which have a specific definition set forth below. Those definitions stated below shall only apply to this Zoning District.

1. *EXTRACTIVE INDUSTRIES: Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral limited to no greater than 5 acres and not more than 20,000 tons (2,000 pounds per ton) per year.*
- ~~1.2.~~ **GUEST CABINS:** A detached structure being an accessory to a single-family dwelling, which may or may not have cooking facilities and/or bathroom facilities. If a guest cabin is rented, it shall be deemed as a rental cabin and subject to density requirements placed upon rental cabins in this zoning district.

- ~~2.3.~~ RECREATIONAL VEHICLE AND CAMPING (PRIVATE USE): The placement of a recreational vehicle or tent on a parcel of land that may or may not contain an existing residence for the private, non-commercial use of the landowner or a guest.
- ~~3.4.~~ RENTAL CABIN: Rental cabins may be built at a density of one for each five acres of contiguous property owned. For example, a person owning 20 acres can have four rental cabins in addition to the main residence. One rental cabin is allowed per tract of record regardless of acreage (Lots less than 5.0 acres in size). Standards are the same as those outlined for a guest cabin. A deed restriction shall be placed on qualifying property by a landowners when two or more rental cabins are built and placed in service.
- The purpose of the deed restriction is to inform future owners of the property of the rental cabin density allocation that has been used or to provide an additional mechanism to insure compliance with the rental cabin density in the event of subdivision of the parent tract.
- ~~4.5.~~ RESIDENTIAL BUSINESS: Any use conducted entirely within the dwelling, accessory buildings or outbuildings and carried on by a landowner, members of the landowner's immediate family and up to five non-family employees.
- ~~5.6.~~ RESIDENTIAL BUSINESS WITH MORE THAN FIVE EMPLOYEES: A Residential Business that employs more than five non-family members for its operation.

Figure 1: The boundaries of the North Fork Zoning District.



E. Criteria Used for Evaluation of Proposed Amendment:

Amendments to the text of the Flathead County Zoning Regulations are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

F. Compliance With Public Notice Requirements:

Legal notice of the Planning Board public hearing was published in the Daily Interlake on July 25, 2010. Following the Planning Board public hearing, notice of the Commissioner's public hearing will be published in the Daily Interlake once a week for two weeks and will be posted at least 45 days prior to the Commissioners hearing in 5 locations within the North Fork Zoning District.

G. Agency Referrals

Referrals for comment on the proposed zoning map amendment were sent to the following agencies:

- Flathead County Road & Bridge Department
 - Reason sent: Responsible for maintenance on the North Fork Road
- Glacier National Park
 - Reason sent: The proximity to Glacier National Park
- Flathead National Forest
 - Reason sent: The proximity to the Glacier View Ranger District
- Montana Fish Wildlife and Parks
 - Reason sent: The amount of critical wildlife habitat in the North Fork
- United States Fish and Wildlife Service
 - Reason sent: The presence of habitat for wildlife within the North Fork with Endangered Species Act protections.
- Montana Department of Natural Resources and Conservation
 - Reason sent: Proximity to the Coal Creek State Forest

III. COMMENTS RECEIVED

A. Public Comments

As of 5 pm of July 27, 2010, no public comments have been received. Any comments received after 5 pm of July 27, 2010 will be distributed directly to the appropriate boards at the time of their meeting.

B. Agency Comments

As of 5 pm of July 27, 2010, no agency comments have been received. Any comments received after 5 pm of July 27, 2010 will be distributed directly to the appropriate boards at the time of their meeting.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Review of Proposed Amendment (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed text amendment is made in accordance with the Growth Policy/Neighborhood Plan.

Neighborhood Plan Review

The North Fork Neighborhood Plan was originally adopted in 1987 and was amended in 1992 and 2008. The plan provided the basis for the North Fork Zoning District. Below is a list and discussion of goals and policies of the North Fork Neighborhood plan that may be relevant to this proposal.

GOAL 2: To maintain the remote undeveloped qualities unique to the North Fork

An extractive industry is not just the mining of materials but can also include the processing of materials. Impacts generated by extractive industries may include dust, noise, visual impacts, odors, fumes and the use of chemicals. The introduction of the impacts mentioned above may be in conflict with the remote undeveloped qualities unique to the North Fork.

Policy 2.5 Industrial uses should not be allowed other than small-scale extractive industries, pursuant to the conditional use permit process.

Currently, this policy has not been implemented. “Small-scale extractive industries” is not defined in the FCZR. The proposed text amendment would codify “small-scale extractive industries” within the North Fork Zoning District effectively implementing this policy and would continue to allow small scale extractive industries pursuant to the conditional use permit process.

GOAL 3: To maintain and enhance the pristine water and air quality found in the North Fork

Extractive industries can be done without impacts to the environment; however, they also have risks. Limiting the size and scale of extractive industries limits the risk of accidental damage to the environment.

Policy 3.2 No transportation of commercial quantities of any toxic materials by either private or public means. This would not include materials in quantities intended for domestic use or basic business use, such as propane, diesel fuel, gasoline, fertilizer, and the like.

Extractive industries allow processing of materials which may include the use of chemicals. Large scale extractive industries that require processing of materials with chemicals would require the transportation of commercial quantities of potentially toxic materials. The proposed text amendment would likely limit the size of extractive industries to where transport of large quantities of chemicals would not be necessary. The proposed text amendment would effectively implement this policy.

Policy 3.5 Support the efforts of local, state, tribal, and federal agencies to maintain high standards of water quality in the North Fork watershed. Coordinate with local, state and federal land management agencies to maintain or enhance air quality in the North Fork.

The MOU between the Governor of Montana and the Premier of British Columbia is based in an effort to protect the water quality of the North Fork of the Flathead watershed. The proposed text amendment is a part of what Flathead County can do to implement the intent of the MOU. The proposed text amendment limiting extractive industries to small scale operations reduces the potential for polluting the watershed and is an implementation of this policy.

Growth Policy Review

According to 76-2-203 (1) and 76-2-203(a), M.C.A. zoning regulations must be made in accordance with an adopted growth policy.

The Implementation Plan found in the Flathead County Growth Policy Appendix C identifies how policies are to be implemented. The Implementation Plan separates the policies into separate categories by how they are to be implemented. The categories are:

Policy: A specific but non-regulatory statement that directly guides a community towards meeting an established goal regarding the promotion of public health, safety, welfare and efficiency in the process of community development. Growth-related policies are frequently directly implemented with regulatory mechanisms.

Action Item: A statement providing guidance for future planning efforts and requiring a follow-up action such as creation of a subsequent, more detailed plan or educational outreach effort. Implementation of an action item (i.e. creation of an additional plan) can result in detailed policies regarding a specific issue.

Neither: The *policy* category, as stated in the Flathead County Growth Policy, does not provide specific guidance for growth or direction for future planning efforts.

Below is a list of policies that are listed as “Policy” in the implementation plan that may be implemented through the use of zoning that may be relevant to this proposal.

P.12.5 Designate areas where mineral resource extraction is most appropriate and will have the least impact on other resources and land uses.

The North Fork Neighborhood Plan recommends only small scale industrial operations identifying the area as not appropriate for mineral resources extraction because of the impact on resources and land uses. The proposed text amendment is implementing this policy by limiting the size and scale of extractive industries. The proposed text amendment is consistent with P.12.5 of the Flathead County Growth Policy.

P.12.6 Restrict sand and gravel operations in areas that pose a threat to water quality.

Extractive industries allow sand and gravel operations. The MOU has identified the North Fork of the Flathead watershed as one of international importance. Sand and gravel operations, if not conducted properly, can pose a threat to water quality. Limiting the size and scale of operations serves to protect water quality.

Finding #1- The proposed text amendment is made in accordance with the North Fork Neighborhood Plan because it is consistent with the goals and policies of the North Fork Neighborhood Plan and effectively implements Policies 2.5, 3.2 and 3.5.

Finding #2- The proposed text amendment is made in accordance with the Flathead County Growth Policy because it is consistent with the goals and policies and implements Policies 12.5 and 12.6.

ii. Whether the proposed text amendment is designed to:

1. Secure safety from fire and other dangers;

The North Fork Zoning District is not in a rural fire district. Fire protection is provided by the Flathead County Fire Service Area. Given the remote location of the area, response times to fires could be delayed compared to other areas of the county. Limiting the size and scale of extractive industries is appropriate given the limited fire services and delayed response times.

Finding #3- The proposed text amendment is designed to secure safety from fire and other dangers because limiting the size and scale of extractive industries is appropriate given the remote location and delayed response times in the area.

2. Promote public health, public safety, and general welfare;

There are no facilities located in the North Fork Zoning District to provide emergency response services. The Flathead Regional Medical Center has a helicopter service available that can respond to the North Fork if available. Ambulance service can come from Columbia Falls. The National Park Service has a ranger station at Polebridge that can assist with emergencies in certain situations but they cannot be responsible to provide coverage to the area. Given the lack of facilities and delayed response times due to the remoteness of the area, limiting the size and scale of extractives industries is appropriate.

The MOU has identified the watershed as one of international importance. Protecting the water quality within the watershed is the primary objective of the MOU which is intended to benefit the people of British Columbia, Montana, the Ktunaxa Nation, the Salish Kootenai, and the Pend d' Oreille. The proposed text amendment is an element of the implementation of the MOU and will benefit the general welfare of the people.

Finding #4- The proposed text amendment is designed to promote public health, safety and general welfare because limiting the size and scale of

extractive industries is appropriate given the remote location and delayed response times in the area.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Public facilities in the North Fork are limited to roads and parks. The proposed text amendment will limit the size and scale of extractive industries to more appropriately fit with the limited public facilities available in the area.

Finding #5- The proposed text amendment is designed to facilitate the adequate provision of public facilities because limiting the size and scale of extractive industries is appropriate given the lack of public facilities in the area.

iii. In evaluating the proposed text amendment(s), consideration shall be given to:

1. The reasonable provision of adequate light and air;

According to the North Fork Neighborhood Plan, dust is of a major concern. Dust in the North Fork is primarily generated by traffic. The introduction of new extractive industries to the area may increase dust from traffic, and also from the extractive industry itself. Limiting the size and scale of extractive industries will prevent a potential increase in dust.

Finding #6- The proposed text amendment is given consideration to the reasonable provision of light and air because limiting the size and scale of extractive industries will not result in an increase in dust.

2. The effect on motorized and non-motorized transportation systems;

The North Fork Zoning District is in a remote area of Flathead County. The road to the area is gravel, and sometimes conditions are hazardous. The proposed text amendment will limit the size and scale of extractive industries to a level that may be more appropriate to the existing road conditions. The amendment will prevent large operations from introducing substantial increases in traffic which may result in unsafe conditions.

Private lands in the North Fork are almost entirely surrounded by Glacier Park and the Flathead National Forests. The park and the forest both have an extensive trail network. The trail network will not be impacted by the proposed text amendment.

Finding #7- The proposed text amendment will not have an impact on motorized and non-motorized transportation systems because limiting the size and scale of extractive industry is appropriate for the existing road conditions and the existing trail system is on public land and will not be affected.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The North Fork Zoning District is located in a remote area of Flathead County. The nearest municipality is the City of Whitefish over 14 miles by

air across the Whitefish Range and the Flathead National Forest. The City of Columbia Falls is located over 16 air miles to the south also separated by the southern end of the Whitefish Range and the Flathead National Forest. Because of the distances separating the North Fork from the nearest municipalities the proposed text amendment is not likely to have an impact on urban growth.

Finding #8- The proposed text amendment will not have an impact on compatible urban growth in the vicinity of cities and towns because the zoning district is in a remote area of Flathead County and not in the proximity of any incorporated areas.

4. The character of the district(s) and its peculiar suitability for particular uses;

The North Fork Neighborhood Plan states the area is, “a wide open, uncrowded place, with pristine water, clean air, dark night skies, abundant wildlife, quiet and solitude with incredible scenic vistas are values residents of the North Fork hold dear.” The intent of the plan is to promote development in a manner that doesn’t jeopardize these values. The plan recommends and the zoning district codifies large lot residential and limited commercial development that is compatible with the area. The plan recommends allowing industrial development that is limited in size and scale, but the North Fork Zoning has not codified that desire. The proposed text amendment will codify the desire to allow industrial development that is limited in size and scale and more compatible with the area. Limiting the size and scale of extractive industries is in concert with the character of the district and the suitability for uses in the area.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

As discussed in item iii (4) of this report. The neighborhood plan and the zoning establish the area as large lot residential with limited commercial uses. The plan recommends limiting the size and scale of industrial uses but the zoning does not codify this recommendation. The proposed text amendment would codify the recommendation to limit the size and scale of extractive industries and therefore would be encouraging the most appropriate use of land throughout the jurisdiction.

Finding #9- The proposed text amendment would facilitate the character of the district and its peculiar suitability for particular uses, and conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area because the North Fork Neighborhood Plan recommends limiting the size and scale of industrial uses, the text amendment would codify that recommendation and be and appropriate for the area.

iv. Whether the proposed text amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The North Fork Zoning District is located in a remote area of Flathead County. The nearest municipality is the City of Whitefish over 14 miles by air across the Whitefish Range and the Flathead National Forest. The City of Columbia Falls is located over 16 air miles to the south also separated by the Whitefish Range and the Flathead National Forest. There are no nearby municipalities.

Finding #10- The proposed text amendment will not have an impact on zoning ordinances of nearby municipalities because the zoning district is in a remote area of Flathead County and there are no nearby municipalities.

V. SUMMARY OF FINDINGS

Finding #1- The proposed text amendment is made in accordance with the North Fork Neighborhood Plan because it is consistent with the goals and policies of the North Fork Neighborhood Plan and effectively implements Policies 2.5, 3.2 and 3.5.

Finding #2- The proposed text amendment is made in accordance with the Flathead County Growth Policy because it is consistent with the goals and policies and implements Policies 12.5 and 12.6.

Finding #3- The proposed text amendment is designed to secure safety from fire and other dangers because limiting the size and scale of extractive industries is appropriate given the remote location and delayed response times in the area.

Finding #4- The proposed text amendment is designed to promote public health, safety and general welfare because limiting the size and scale of extractive industries is appropriate given the remote location and delayed response times in the area.

Finding #5- The proposed text amendment is designed to facilitate the adequate provision of public facilities because limiting the size and scale of extractive industries is appropriate given the lack of public facilities in the area.

Finding #6- The proposed text amendment is given consideration to the reasonable provision of light and air because limiting the size and scale of extractive industries will not result in an increase in dust.

Finding #7- The proposed text amendment will not have an impact on motorized and non-motorized transportation systems because limiting the size and scale of extractive industry is appropriate for the existing road conditions and the existing trail system is on public land and will not be affected.

Finding #8- The proposed text amendment will not have an impact on compatible urban growth in the vicinity of cities and towns because the zoning district is in a remote area of Flathead County and not in the proximity of any incorporated areas.

Finding #9- The proposed text amendment would facilitate the character of the district and its peculiar suitability for particular uses, and conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area because the North Fork Neighborhood Plan recommends limiting the size and scale of industrial uses, the text amendment would codify that recommendation and be and appropriate for the area.

Finding #10- The proposed text amendment will not have an impact on zoning ordinances of nearby municipalities because the zoning district is in a remote area of Flathead County and there are no nearby municipalities.

VI. RECOMMENDATION

The MOU has identified the North Fork watershed as one of international importance. Protecting the water quality within the watershed is the primary objective of the MOU which is intended to benefit the people of British Columbia, Montana, the Ktunaxa Nation, the Salish Kootenai, and the Pend d' Oreille. The proposed text amendment is an element of the implementation of the MOU and will benefit the general welfare of the people. Staff recommends the Flathead County Planning Board and Board Commissioners adopt staff report FZTA-10-03 as findings of fact and approve the text amendment to the North Fork Zoning District limiting the size and scale of extractive industries.

Planner: DH